

EX PARTE OR LATE FILED

NEW YORK, NEW YORK  
DENVER, COLORADO

**ARNOLD & PORTER**

1200 NEW HAMPSHIRE AVENUE, N.W.  
WASHINGTON, D.C. 20036-6885

(202) 872-6700

CABLE: "ARFOPO"

FACSIMILE: (202) 872-6720

TELEX: 88-2733

LOS ANGELES, CALIFORNIA

TOKYO, JAPAN

WILLIAM E. COOK, JR.  
DIRECT LINE: (202) 872-6996

RECEIVED

FEB 28 1995

February 28, 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**BY HAND DELIVERY**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Ex Parte Presentation  
in MM Docket No. 92-266

Dear Mr. Caton:

Pursuant to the Commission's ex parte rule, 47 C.F.R. § 1.1206, an original and one copy of this letter are being filed in MM Docket No. 92-266 as notification that representatives of the National Association of Telecommunications Officers and Advisors ("NATOA") held a conference call on Monday, February 27, 1995, with Margo Delmon, Cindy Jackson, Paul D'Ari and Aaron Goldschmidt, all of the Policy and Rules Division of the Cable Services Bureau.

On behalf of NATOA, the following representatives participated in the meeting: Ms. Susan Littlefield, President of NATOA and Cable Regulatory Administrator for the City of St. Louis, Missouri; David Hankin, Chairman of the NATOA-FCC Liaison Committee and Assistant General Manager of the Los Angeles Department of Telecommunications; Eileen Huggard, a member of the NATOA Board of Directors and Deputy General Counsel of the New York City Department of Information Technologies and Telecommunications; Tom Robinson, a cable consultant who represents a number of local governments in rate regulation proceedings; John Pestle, Pat Miles, and Joe Van Eaton, each of whom is an attorney representing a number of local governments in rate regulation proceedings; and myself, a partner in the law firm of

No. of Copies rec'd  
List A B C D E

21

ARNOLD & PORTER

Mr. William F. Caton

February 28, 1995

Page 2

Arnold & Porter and NATOA's special outside counsel on federal telecommunications matters.

NATOA urged the Commission to not adopt rules that would permit cable operators to pass through increases in franchise fees, cable specific fees, FCC regulatory fees, copyright fees and inflationary costs under an accelerated review schedule, which, among other things, would permit such a rate increase to go into effect after 30 days unless a cable operator failed to submit a complete filing or the franchising authority determined that the requested rate increase is unreasonable. NATOA noted that it would be extremely difficult for a franchising authority to make a rate decision in 30 days, given, among other things, a requirement that a franchising authority solicit public comment in the thirty day period. Moreover, NATOA noted that the rate regulatory process already is administratively burdensome and that such a rule would further complicate the review process by essentially creating two separate review processes each quarter -- an expedited process for certain costs (e.g., FCC regulatory fees) and the regular review process for other costs (e.g., increases in programming costs).

Moreover, NATOA noted that it is sometimes difficult to determine what is the proper amount of an increase for, for example, inflationary costs or franchise fees. NATOA also noted that a franchising authority and cable operator often disagree on the proper amount. In such cases, 30 days is insufficient for the franchising authority to make a rate decision.

In addition, NATOA noted that a franchising authority often may not be able to make a rate decision within 30 days because it is still reviewing the FCC Form 1200 form or may be waiting for the FCC to rule on an issue on appeal from a previous rate proceeding. In such cases, without a decision on the previous rate filing, the franchising authority may not be able to complete its review of the FCC Form 1210 and establish a reasonable rate. Also, NATOA noted that an accelerated review period is not justified since franchising authorities are not usually responsible for what cable operators allege is a "regulatory lag" occurring before a rate decision. Any such lag is often the result of an operator's failure to submit complete information in a timely manner or to

ARNOLD & PORTER

Mr. William F. Caton  
February 28, 1995  
Page 3

submit all information requested by the franchising authority. Moreover, NATOA noted that by forcing franchising authorities to make rate decisions on an accelerated basis, franchising authorities may be forced to make rate decisions before they obtain complete information from cable operators, thus necessitating appeals to the FCC that may have been avoided if the parties had more time to resolve issues related to a cable operator's rate filing.

Moreover, NATOA urge the FCC not to permit cable operators to recover external costs incurred between the date a rate filing is submitted and the date of the rate order. NATOA noted that such a rule would encourage cable operators to not cooperate with franchising authorities during the rate review process and to prolong the rate process since operators will be assured of recovering external costs incurred during the pendency of the franchising authority's rate review. Moreover, if the FCC adopts such a rule, NATOA stated that, to the extent a cable operator submits a filing that would require it to reduce rates, the operator should be required to refund to subscribers the amount of any rate reduction that subscribers could have experienced during the pendency of a franchising authority's rate review.

NATOA also urged the FCC to narrowly define which "franchise costs" are external costs under the FCC's external cost rules. NATOA urged the Commission not to treat as external costs any costs a cable operator incurs in curing breaches of past franchise obligations or any increase in the cost of complying with current franchise obligations. Moreover, NATOA urged the Commission not to treat as "franchise costs" for external cost purposes any voluntary offers by a cable operator that are embodied in the franchise agreement. Overall, NATOA urged the Commission to narrowly define which franchise costs are entitled to external cost treatment, and not count increases in such franchise costs as an external cost unless such increase is attributable to a specific new or additional franchise requirement imposed by a franchising authority.

NATOA also commented on a proposal that the Commission limit, in those jurisdictions in which a cable programming service ("CPS") tier complaint has not been filed after a certain date, the right of subscribers to

ARNOLD & PORTER

Mr. William F. Caton  
February 28, 1995  
Page 4

challenge the reasonableness of CPS tier rates. Under the proposal, the Commission would limit its review to the reasonableness of a rate increase, rather than the reasonableness of the underlying rate. NATOA urged the Commission to continue to review the reasonableness of the entire CPS rate, rather than the portion of any rate increase, in response to all CPS complaints. To the extent the Commission limits the right of subscribers to challenge the reasonableness of the entire CPS rate in areas where a CPS complaint has not been previously filed, NATOA urged the Commission to require cable operators to provide subscribers adequate notice of such future limitation through bill inserts and other means.

NATOA also urged the Commission to prohibit cable operators that serve multiple franchise areas from advertising franchise fees on a "fee plus" basis (i.e., advertising franchise fees as a charge separate from the service charge), and to clarify that cable operators must itemize the entire amount owed as franchise fees, which in many jurisdictions should be calculated based on the operators' gross revenues, rather than net revenues. Moreover, in situations where a cable operator is entitled to a refund of franchise fees as a result of a refund by the operator of overcharges to subscribers, NATOA urged the Commission to grant franchising authorities the right to determine whether to refund such franchise fees in a lump sum amount or to deduct such franchise fees against future franchise fee payments. NATOA also urged the Commission not to impose interest on franchise fees that a franchising authority must refund to a cable operator. NATOA also noted that there was no need for interest or a time limit by which franchising authorities must refund franchise fees since cable operators desiring refunds could offset them against the next franchise fee payment.

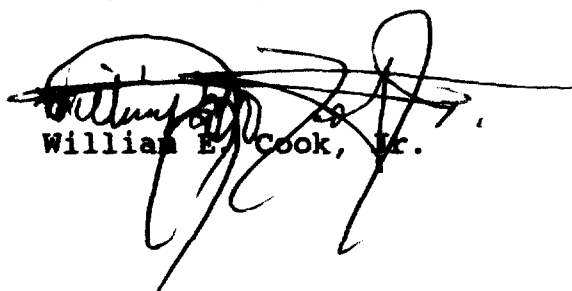
NATOA also urged the Commission to continue the requirement that, in instances where cable operators rates are not justified based on data available when they set rates, such operators must use updated data (i.e., refreshed data) in calculating the permissible rate under the FCC rate rules. NATOA noted that it is not fair to permit cable operators whose rates are not reasonable under the FCC rules to reduce the amount of any refund owed by calculating the permitted rates based on outdated data rather than "refreshed" data.

ARNOLD & PORTER

Mr. William F. Caton  
February 28, 1995  
Page 5

Please contact me if you have any questions  
regarding this matter.

Respectfully submitted,



William E. Cook, Jr.

cc: Paul D'Ari  
Margo Delmon  
Aaron Goldschmidt  
Cindy Jackson